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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,135	10/17/2003	George P. Teitelbaum	VLINK.002DV2	2028
20995	7590	08/01/2011	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			CUMBERLEDGE, JERRY	
2040 MAIN STREET				
FOURTEENTH FLOOR			ART UNIT	PAPER NUMBER
IRVINE, CA 92614			3733	
			NOTIFICATION DATE	DELIVERY MODE
			08/01/2011	ELECTRONIC

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GEORGE P. TEITELBAUM

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Appeal 2009-012860  
Application 10/688,135  
Technology Center 3700

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Before: STEVEN D.A. MCCARTHY, WILLIAM V. SAINDON, and  
MICHAEL HOELTER, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's rejection of claims 11, 12, and 36-53. Claims 1-10 and 13-35 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

### *The Invention*

Claim 11, reproduced below, is illustrative of the claimed subject matter.

11. A directing sheath comprising:

a proximal portion with a proximal end;

a distal portion with a distal end;

a central portion between the proximal portion and the distal portion comprising at least two openings that extend generally traverse to a longitudinal axis of the directing sheath; and

a lumen extending through the directing sheath from the proximal end to distal end generally along the longitudinal axis of the directing sheath and intersecting the at least two openings;

where the directing sheath is scored along its longitudinal axis to allow the directing sheath to be split into two separate halves and dividing the lumen by peeling the directing sheath apart at either its proximal end or its distal end or both along the scoring.

### *References*

The Examiner relies upon the following prior art references:

Nissenbaum	US 3,155,091	Nov. 3, 1964
Davey	US 2005/0027257 A1	Feb. 3, 2005

### *Rejections*

- I. Claims 11, 36-41, 43, 44, 46-51, and 53 are rejected under 35 U.S.C. § 102(e) as anticipated by Davey.

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II. Claims 12, 42, 45, and 52 are rejected under 35 U.S.C. § 103(a) as unpatentable over Davey and Nissenbaum.

## SUMMARY OF DECISION

We REVERSE.

## OPINION

In relevant part, independent claim 11 requires a sheath with a central portion having at least two openings that intersect a lumen and that extend generally traverse to a longitudinal axis of the sheath. Independent claim 44 requires a similar sheath with similar openings. The Examiner found that Davey describes the openings required by claims 11 and 44 in figure 13. Ans. 3-5. Appellant argues that the “openings” the Examiner finds in Davey are only a single opening. App. Br. 10. As such, the dispositive issue in this appeal is whether Davey describes at least two openings intersecting a lumen as required by claims 11 and 44.

We reproduce the Examiner’s annotated copy of Figure 13 of Davey below.

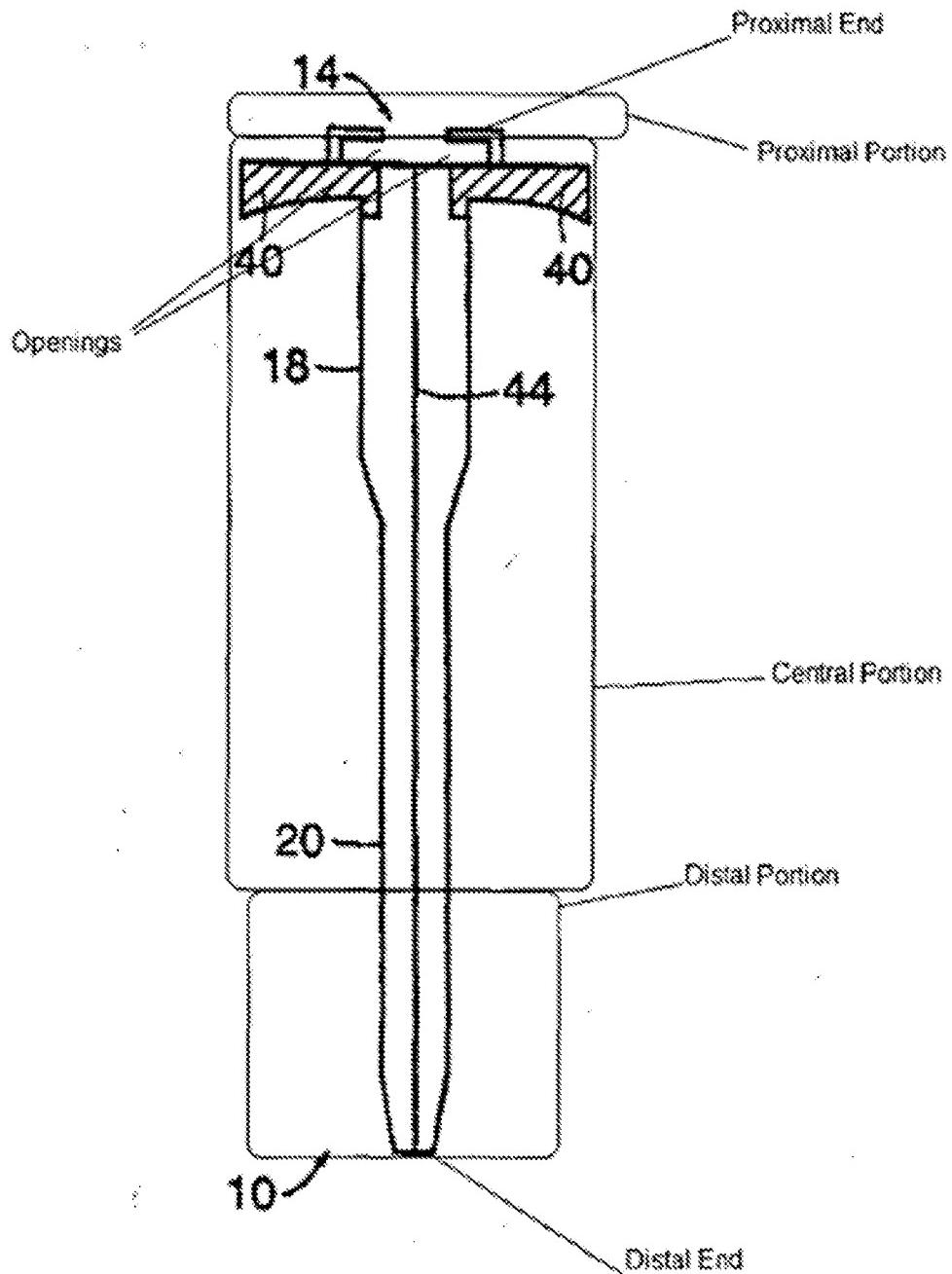


Figure 13 depicts the sheath 10 of Davey with the Examiner's annotations.

The Examiner states that the openings identified in Davey's Figure 13 extend through the central portion, but do not extend entirely there through. Ans. 5. The Examiner adds, "[w]hen the device is split in two halves, there

will be a right half with an opening and a left half with an opening, the openings being the portions [annotated in fig. 13].” Ans. 10.

It appears the Examiner considers each of the gaps between the arm-like receiving structures of hub 14<sup>1</sup> and the wings 40 to correspond to one of the claimed “openings.” However, we find that the arm-like structures and/or wings 40 do not overhang the lumen opening but rather terminate before reaching the lumen (otherwise, the dilator 16 would not fit between the two arms or the wings). As such, the “openings” defined by the locking arm structures in Davey do not overhang the lumen but rather are tangential to the lumen. Figure 1 below is an enlarged, annotated portion of figure 13 of Davey, and illustrates the Examiner’s so-called “openings” (labeled in figure 1 as gaps).

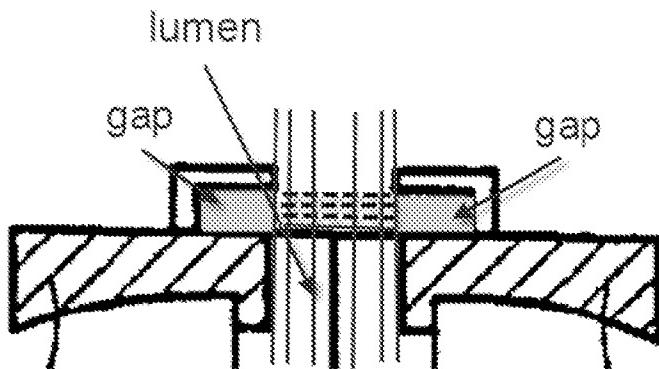


Figure 1 depicts the gaps between the locking arms of the hub 14 and the wings 40 of the hub 14.

To the extent the Examiner’s position is that the “openings” are the gaps defined by the locking arm structures *in addition to* a portion of the adjacent

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<sup>1</sup> These arm-like structures are unlabeled in Davey’s Figure 13 but are described in paragraph [0046] and shown locking onto the flanges of dilator 16 in figure 1.

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space between them (identified in figure 1 as the dashed lines), we do not find this interpretation of Davey reasonable. The areas defined by the gaps act to secure the flanges of the dilator whereas the area between these gaps is where the dilator passes into the lumen. *See* Davey, fig. 1. Because the area between the gaps serves a different purpose than the area defined by the gaps, we do not consider it reasonable to include the former as part of the latter. Accordingly, we do not sustain the Examiner's finding that Davey describes two openings as required by claims 11 and 44 and dependent claims 36-41, 43, 46-51, and 53. As such, we do not sustain the Examiner's anticipation rejection of claims 11, 36-41, 43, 44, 46-51, and 53.

The Examiner's obviousness rejection of dependent claims 12, 42, 45, and 52 does not address whether the combined teachings of Davey and Nissenbaum render obvious at least two openings as required by independent claims 11 and 44. Consequently, we do not sustain the Examiner's obviousness rejection of claims 12, 42, 45, and 52.

## DECISION

For the above reasons, we reverse the Examiner's decision regarding claims 11, 12, and 36-53.

## REVERSED

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